International Brotherhood of Electrical Workers, Local No. 125, AFL–CIO *and* Loy Clark Pipeline Company

Laborers' International Union of North America, Construction and General Laborers Union, Local 320 *and* Loy Clark Pipeline Company. Cases 36–CD–210 and 36–CD–211

September 29, 1998

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On July 3, 1997, Loy Clark Pipeline Company (the Employer) filed a charge in Case 36–CD–210 against International Brotherhood of Electrical Workers, Local No. 125, AFL–CIO (Local 125 or IBEW Local 125), alleging that Local 125 violated Section 8(b)(4)(D) of the Act by engaging in proscribed activities with an object of forcing the Employer to assign certain work to employees represented by Local 125 rather than to employees represented by other labor organizations. On July 9, 1997, the Employer filed a charge in Case 36–CD–211 against Laborers' International Union of North America, Construction and General Laborers Union, Local 320, AFL–CIO (Local 320 or Laborers Local 320), alleging that it violated Section 8(b)(4)(D) of the Act by engaging in proscribed activities with an object of forcing it to continue to assign certain work to employees represented by Local 320 rather than to employees represented by another union. A hearing was held on September 10–12, 1997, before Hearing Officer Leora Watkins.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three–member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer, an Oregon corporation, is engaged in the business of utility contracting with its principal office in Beaverton, Oregon, where during the past year, a representative period, it received revenues in excess of $50,000 for services performed directly for customers outside the State of Oregon. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The parties stipulated, and we find, that International Brotherhood of Electrical Workers, Local No. 125, AFL–CIO and Laborers' International Union of North America, Construction and General Laborers Union, Local 320, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The instant proceeding grows out of the same sequence of events which gave rise to a Decision and Determination of Dispute which issued October 22, 1997.[2] Since 1956, the Employer has performed construction work in the utility industry (natural gas, power, and telephone) providing paving, saw cutting, concrete work, asphalt paving, drilling, and equipment rental. It employs about 225 full-time employees in a variety of crafts, including teamsters, steamfitters-plumbers, carpenters, operating engineers, laborers, and electricians, as required to complete a particular project. The Employer has been party to several collective-bargaining agreements covering work done by these various crafts.

The Employer had contracted with Portland General Electric (PGE) to perform work which entailed: (1) excavating trenches or holes in the ground through which conduit is placed and (2) installing conduit and vaults and other tasks which, when completed, allow nonenergized cable to be installed in the conduit. The Employer's long-established practice had been to assign this work to a crew composed of employees represented by the Teamsters, Operating Engineers, and Laborers, the size and composition of which depended on the particular project. Teamsters would bring in the equipment and materials to the jobsite; Operating Engineers would operate the backhoes, drilling machines, and other equipment necessary to move and place the conduit, vaults, and other materials; and Laborers would cut and install the conduit, as well as remove and clean the bits for the directional drilling machine. From 1991[3] until mid-1997, the Employer was party to a collective-bargaining agreement with IBEW Local 125, and, pursuant to this agreement, this composite crew also occasionally included a few IBEW-represented "groundmen" (also referred to as "grunts") who helped the Operating Engineers and Laborers with simple tasks, not associated with running the machinery or other specialized work.

In early 1997, under a contractual agreement with PGE, the Employer dispatched a crew of operating engineers to an excavating job. These employees were met at the jobsite by a Local 125 foreman who refused to permit the operating engineers to work because they did not

[1] During the hearing, the Employer moved to consolidate this proceeding with Cases 36–CD–207 and 36–CD–209, which were then pending before the Board. Those cases dealt with a similar work dispute involving the Employer, IBEW Local 125, and Operating Engineers Local 701. The Board issued its Decision and Determination of Dispute in the earlier proceeding on October 22, 1997 (324 NLRB 812). In the hearing in this case, the Employer submitted the transcript of the hearing in the earlier cases, as well as certain exhibits, as relevant background for the events in this case, and we have considered that evidence. We also note that, notwithstanding the existence of the two cases, the Employer does not seek a broad order. Accordingly, we deny the Employer's motion to consolidate.

[2] See 324 NLRB 812, described in fn. 1, supra.

[3] In 1991 the Employer also entered into an additional agreement covering "unity work," whereby it would employ employees from IBEW Local 125, Plumbers, and Operating Engineers on a single project site.

possess a Local 125 card. This encounter led to discussions between Local 125 Business Manager Bill Miller and the Employer's president, Ron Clark, relative to Local 125's interest in the work being performed.[4] Local 125 was seeking to require the work to be done exclusively by employees holding its membership card, irrespective of the employee's affiliation with any other union or craft. In the course of their discussions, Miller stated that by sending non-IBEW-represented employees to perform the work, the Employer had "upset the apple cart" and that there would be problems. In a subsequent written communication, Miller warned the Employer that its continued failure to staff such projects with IBEW-represented employees would result in its informing other employers with which the Employer sought to do business that the Employer was not keeping up its end of the bargaining agreement with IBEW.

Local 125's efforts to require that all workers at the PGE jobsites carry its membership cards led to the Operating Engineers' threatening economic action against the Employer in order to preserve the job assignment. In addition, the Operating Engineers filed unfair labor practice charges against Local 125, resulting in the jurisdictional dispute determination referred to above. In light of IBEW Local 125's continuing efforts to require that IBEW-represented employees be assigned to perform "electrical apparatus work," Laborers Local 320 also notified the Employer by letter of June 7, 1997, that it would "take all action, including appropriate economic action, if necessary, to protect work which we believe is within our historical area of performance."

On June 4, 1997, at the close of the hearing in the above-referenced jurisdictional dispute between Local 125 and the Operating Engineers, Local 125 asserted that it would no longer dispute the work there at issue and that it would not contest its assignment by the Employer to the Operating Engineers. Local 125 asserted at that time that it was withdrawing from/canceling its bargaining agreement with the Employer through National Electrical Contractors Association (NECA). Thereafter however, by letter of June 18, 1997, Local 125's business representative charged that the Employer had violated its collective-bargaining agreement by not abiding by the "historic line crew structure" on a project, i.e., by failing to use employees represented by Local 125.

B. Work in Dispute

The disputed work is described as "electrical apparatus work" and includes the installation and placement of vaults; installation, placement, and grouting of conduit; and installation and pulling of measuring devices and work related thereto in the public easement related to underground installation of electric power lines and electric power vaults for Portland General Electric.

[4] See 324 NLRB 812 for fuller discussion of these events.

C. Contentions of the Parties

IBEW Local 125 does not concede that a dispute exists and has filed a Motion to Quash. In support of its motion, Local 125 asserts that on June 4, 1997, it voluntarily terminated its contract with the Employer, that in correspondence dated July 1, 1997, Local 125 further advised the Employer that it was terminating its "letter of assent" through NECA which covered "unity work" and had given rise to their bargaining relationship, and that since that time it has not sought and does not seek work assignments from the Employer. Local 125 also contends that the Employer is not a disinterested party, but rather is using this proceeding to obtain the Board's sanction on its decision to assign the work to Laborers Local 320. In addition, Local 125 contends that neither it nor Local 320 has engaged in conduct violative of Section 8(b)(4)(D).

Arguing in the alternative, IBEW Local 125 contends that the Board should find that the work in dispute properly belongs to employees it represents. Emphasizing the greater skills and training Local 125-represented employees possess with regard to work associated with electrical parts and equipment, it contends that both safety and efficiency will be enhanced by their performance of the work.

Laborers Local 320 asserts that Local 125's position has been inconsistent and that its current contention that it is not claiming the work is disingenuous. It notes that throughout the spring of 1997, IBEW Local 125 pressured the Employer, through threats of labor disputes and other forms of harassment, to assign conduit installation and related work to its members rather than to individuals represented by other labor organizations, including Local 320. In addition, Laborers Local 320 states that it is entitled to the disputed work by virtue of the Employer's assignment and preference, past practice, and the skill, training, and expertise of the employees it represents.

The Employer also points out that IBEW Local 125's actions have been inconsistent—first, making demands for the disputed work, proposing a dual membership arrangement, and seeking to enforce its position through economic pressure; then purportedly disclaiming the work; and thereafter, filing grievances and alleging violations of job safety standards based on the fact that employees other than those it represents were doing the work. The Employer contends that IBEW Local 125's pattern of conduct establishes that it continues to have an interest in the work assignment, its assertions to the contrary notwithstanding.

D. Applicability of the Statute

Before the Board may proceed with a determination pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not

agreed on a method for the voluntary adjustment of the dispute.

As stated above, documentary evidence and testimony presented at the hearing establish that Respondent IBEW Local 125 sought to have the work in dispute reassigned to employees it represents, that it sought to prevent non-IBEW-represented employees from carrying out the work, and that it warned the Employer that problems would result—including possible interference with the Employer's business relationships with other contractors—if the IBEW were not assigned the work. We find that, notwithstanding IBEW Local 125's contention that it no longer has any interest in performing this or other work for the Employer, its conduct suggests that it had and continues to have an interest in the work in dispute. Further, it is undisputed that Laborers Local 320 told the Employer that it would take "all action, including appropriate economic action" against the Employer if employees it represented lost the work in dispute.

Based on our findings, we find reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred and that there exists no agreed-on method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we deny IBEW Local 125's Motion to Quash.

E. Merits of the Dispute

Section 10(k) of the Act requires that the Board make an affirmative award of the disputed work after giving due consideration to various relevant factors. As the Board has frequently stated, the determination in a jurisdictional dispute case is an act of judgment based on common sense and experience in weighing these factors. The following factors are relevant in making a determination of the dispute before us.

1. Board certification and relevant collective-bargaining agreements

The parties stipulated at the hearing that there is no outstanding Board certification relevant to the work involved in this proceeding of either International Brotherhood of Electrical Workers, Local No. 125, AFL–CIO or Laborers' International Union of North America, Construction and General Laborers Union, Local 320, AFL–CIO.

The Employer, through its membership in the Distribution Contractors Association, is party to a collective-bargaining agreement with Laborers Local 320, and it is undisputed that this agreement encompasses the work in dispute. The Employer and Laborers Local 320 have had a collective-bargaining relationship for approximately 40 years.

Although the Employer and Local 125 were party to a collective-bargaining agreement from 1991 until mid-1997 that arguably encompassed the work in dispute, Local 125 terminated this agreement in mid-1997, and it is undisputed that the Employer is not presently a party to any collective-bargaining agreement with Local 125.

We find that this factor favors awarding the work in dispute to employees represented by Laborers Local 320.

2. Employer preference and past practice

The Employer's president, Ron Clark, testified that the Employer prefers that employees represented by Laborers Local 320 perform the disputed work, in accordance with its original assignment. He also testified that the Employer has historically assigned this type and similar work on jobsites in the area using Local 320-represented employees. Accordingly, we find that the factor of employer preference and past practice favors an award of the disputed work to employees represented by Laborers Local 320.

3. Area and industry practice

The vice president/northwest division manager of Henkels and McCoy Inc., a nationwide contractor for the utility industry, testified that his company has a collective-bargaining relationship with IBEW Local 125 and that it utilizes Local 125-represented employees to perform tasks similar to those involved in the disputed work. He noted, however, that Henkels & McCoy does not have a collective-bargaining relationship with the Laborers.

While no other employer testified in this proceeding regarding its practice, the Employer introduced into evidence the transcript from the prior proceeding in which, inter alia, William M. Moe, owner of general contractor W. G. Moe & Sons, testified that his company has employed Laborers to perform work similar to that in dispute in both of these proceedings.

As there is evidence that employers vary in their assignment of work like that in dispute, we conclude that this factor does not favor either of the competing Unions.

4. Relative skills

Representatives of Laborers Local 320 and the Employer testified that employees represented by Local 320 have the skills and training to perform the work in dispute safely, soundly, and skillfully. Peter Lahmann, an instructor for the Northwest Laborers/Employers Training Trust, testified as to the training his organization provides in various aspects of construction work in order to develop and ensure proficiency in such work, including that required to perform the work at issue in this proceeding.

IBEW Local 125 presented witnesses who testified that employees whom it represents undergo extensive training in all areas of work related to electrical construction and that IBEW program trainees are better equipped to perform the work in dispute more skillfully and more safely than those lacking such specific training.

As employees represented by each competing Union receive relevant training and have demonstrated the abil-

ity to perform the disputed work, we find that this factor does not favor either group of employees.

5. Economy and efficiency of operations

Clark testified that it is more efficient and economical to use employees represented by Laborers Local 320 than IBEW Local 125-represented employees to perform the work in dispute. Clark noted that its use of Laborers, whom he has found to be skilled in performing the disputed work, has resulted in jobs of high quality, and that his company's long and harmonious relationship with Local 320 has helped him complete jobs in a timely and efficient way. Based on this unrebutted testimony, we find that this factor favors awarding the disputed work to Local 320-represented employees.

Conclusion

On the record as a whole, and after consideration of all the relevant factors involved, we conclude that the Employer's employees who are represented by Laborers' International Union of North America, Construction and General Laborers Union, Local 320, AFL–CIO are entitled to perform the work in dispute. We reach this conclusion based on the Employer's assignment, preference, past practice, the collective-bargaining agreement, and economy and efficiency of operations. This determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Loy Clark Pipeline Company who are represented by Laborers' International Union of North America, Construction and General Laborers Union, Local 320, AFL–CIO are entitled to perform "electrical apparatus work," including installation and placement of vaults; installation, placement, and grouting of conduit; installation and pulling of measuring devices; and work related thereto, in the public easement related to underground installation of electric power lines and electric power vaults for Portland General Electric.

2. International Brotherhood of Electrical Workers, Local No. 125, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Loy Clark Pipeline Company to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Electrical Workers, Local No. 125, AFL–CIO shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring Loy Clark Pipeline Company, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.